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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203541
Party	Defendant Google Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application No. 85358119  
Mark: GOOGLE+

Googabox World Incorporated	)	
Opposer,	)	
	)	
	)	Opposition No. 91203541
Google Inc.	)	
Applicant.	)	
	)	

**APPLICANT GOOGLE INC.'S MOTION TO DISMISS OPPOSER GOOGABOX  
WORLD INCORPORATED'S OPPOSITION TO THE GOOGLE+ APPLICATION**

Google Inc. (“Google”) hereby moves to dismiss Andre Rossouw’s and Googabox World Inc.’s (collectively “GWI”) Opposition to Google’s Trademark Application No. 85358119 for the GOOGLE+ mark. In the alternative, Google requests that the Board either require a more definitive statement of GWI’s vague Opposition or strike the immaterial and impertinent allegations from GWI’s Opposition.

## **INTRODUCTION**

The Opposition to Google’s Trademark Application No. 85358119 for the GOOGLE+ mark is fatally flawed. Rather than pleading facts, it pleads conclusory statements and asks irrelevant questions. Even if one could capture a few facts from the disorganized Opposition, Google is left to guess at the fundamental bases for the Opposition. For example, Google must guess at:

- (1) The identity of the Opposer;
- (2) The owner of the asserted GOOGABOX mark;
- (3) The nature of the purported claims; and
- (4) Whether the claims are based on common law use or a federal registration.

Answering these questions, however, does not remedy the deficient Opposition. The, purported opposer, Googabox World Inc. does not exist. Since it does not exist, it has no standing to pursue an opposition against the GOOGLE+ mark. Moreover, given the GOOGLE+ mark’s near identical similarity to Google’s pre-existing and famous GOOGLE and GOOGLE-formative marks, the Opposition cannot plausibly plead that GOOGABOX and GOOGLE+ are similar while claiming that GOOGABOX and GOOGLE are dissimilar. The Opposition’s allegations therefore fail to meet the plausibility standards required by the Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). And instead, the Opposition is “a largely

groundless claim” designed to “take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value.” *Id.* at 557-58 (citation omitted).

Google respectfully requests that the Board heed the Supreme Court’s counsel and dismiss the Opposition’s implausible claims.<sup>1</sup>

## **FACTUAL BACKGROUND**

### **A. Google’s Services and the Famous GOOGLE Mark.**

Google is undoubtedly one of the world’s best-known companies. Due to Google’s extensive number of users and voluminous media coverage, the GOOGLE mark has become well-known among consumers as identifying Google’s products and services, including social networking related services. The Board and Trademark Office examiners have repeatedly recognized the fame of the GOOGLE mark. *See Google Inc. v. Pivot Design, Inc.*, Opposition No. 91171124, 2007 WL 1207191, at \*3-5 (T.T.A.B. April 20, 2007) (finding the GOOGLE mark famous based on its significant number of users and revenues, fame surveys, numerous awards and the addition of the GOOGLE mark to the dictionary); *Google Inc. v. Nikolaus Gubernator*, Opposition No. 91171014 at p. 9 (T.T.A.B. March 5, 2005) (“We conclude that [Google] has shown significant market exposure, revenue, and overall fame amongst the relevant public.”); United States Patent and Trademark Office Action for the Trademark Application No. 77787479 dated October 27, 2009 (refusing registration pursuant to Trademark Act Section 2(a) since “although GOOGLE INC is not connected with the goods and/or services provided by

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<sup>1</sup> In the alternative, Google respectfully requests that the Board require the Opposer to replead a more definitive, short and plain statement of its claims so that Google can reasonably understand the Opposition’s claims. Google also respectfully requests that the Board strike the repeated immaterial and impertinent allegations from the Opposition.

applicant under the applied-for mark, GOOGLE INC is so famous that consumers would presume a connection.”). GWI agrees. GWI has conceded that the GOOGLE mark is “unique,” “distinctive,” and holds “established fame.” In short, the GOOGLE mark is one of the strongest marks in the world. *See* 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 11:8 (4th ed. 2011) (finding GOOGLE to be a fanciful mark and entitled to broad protection).

To protect its rights in the GOOGLE mark in the United States, Google has obtained and filed registrations and applications with the United States Patent and Trademark Office. Today, Google’s federal trademark registrations and applications include the following marks:

Mark	Registration No./ Application No.	Classes
GOOGLE	2806075	38, 42
GOOGLE	2884502	9
GOOGLE	2954071	9, 11, 12, 16, 18, 21, 25, 28, 35
Google	3140793	9, 11, 16, 18, 21, 25, 28, 35, 38, 42
GOOGLE	3570103	36
GOOGLE CHECKOUT	3725612	36
GOOGLE SIDEWIKI	3962604	9, 41, 42
GOOGLE LATITUDE	3979983	9, 42, 45
Google	3990185	3, 20
GOOGLE GOGGLES	4016470	9, 42
Google	4058966	9, 35, 36, 42
GOOGLE	77082272	42
GOOGLE WAVE	77764401	38, 42
GOOGLE	78433507	35
GOOGLE TALK	78698285	9, 38, 42
GOOGLE	78828042	38
GOOGLE WRITELY	78941798	42
GOOGLE TV (and design)	85405074	9
GOOGLE BOOST	85286574	35

GOOGLE CHROME	85463547	9, 35, 42
GOOGLE IDEAS (and design)	85475520	35, 41, 42
GOOGLE TAKEOUT	85358126	38, 39, 42
GOOGLE PLACES	85399216	35, 38, 42
GOOGLE	85531517	42

Taken together, Google’s registration for and common law use of its famous GOOGLE mark affords it broad trademark rights in the GOOGLE and GOOGLE-formative marks.

Google’s application for the GOOGLE+ mark is consistent with these broad trademark rights.

## **B. GWI’s Purported GOOGABOX Mark.**

As a preliminary and fundamental matter, it is unclear who the Opposer is in this matter; who purportedly owns the alleged GOOGABOX mark; and what specific rights in GOOGABOX are being asserted.

For example, Googabox World Inc. claims to own the GOOGABOX mark. Googabox World Inc. is listed as the Opposer in the caption and signature line of the Opposition. And the Opposition alleges harm to Googabox World Inc.’s undefined intellectual property. *See* Opposition at p. 3. However, Googabox World Inc. does not exist. In July 2008, the Nevada Secretary of State revoked Googabox World Inc.’s corporation status. *See* Ball Declaration In Support of Google’s Motion to Dismiss ¶ 2, Ex. A.<sup>2</sup> And today there is no corporate entity known as Googabox World Inc.

Conversely, Andre Rossouw does not affirmatively claim ownership of the GOOGABOX

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<sup>2</sup> The Board may take judicial notice of facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Facts in secretary of state records are therefore the proper subject of judicial notice. *See Access 4 All v. Oak Spring, Inc.*, No. 504CV75OCGRJ, 2005 WL 1212663, \*2 n.16 (M.D. Fla. May 20, 2005) (taking judicial notice of the records of the Florida Department of State, Division of Corporations); *Redding v. Freeman Prods., Inc.*, No. 94 C 398, 1995 WL 410922, \*2 (N.D. Ill. July 10, 1995) (taking judicial notice of certificates of good standing issued by the Illinois Secretary of State).

mark in the Opposition. Instead, the unclear Opposition repeatedly refers to “we” “our” and “OUR” in alleging its claims. It is possible that “we” “our” and “OUR” includes Mr. Rossouw, but it is the Opposer’s obligation to clarify such detail or relationship. Here, the Opposition has failed to do so. Neither Googabox World Inc. nor Mr. Rossouw has provided any evidence of or allegation regarding a license or assignment between Mr. Rossouw and Googabox World Inc. for the GOOGABOX mark. Thus, the deficient Opposition does not sufficiently identify the Opposer and/or owner of the purported GOOGABOX mark.

The Opposition likewise fails to sufficiently identify the rights being asserted. The purported trademark registration for the GOOGABOX mark is not mentioned in the Opposition brief. Instead, the brief only references the GOOGABOX mark generally. The closest the brief comes to alleging a basis for its claims is the statement that: “This is OUR intellectual property we acquired through proper steps. . . .” *See* Opposition at p. 4. But again it is unclear exactly what the intellectual property is, what the proper steps were that they alleged, and who is the “OUR” and “we” who claims ownership in the intellectual property.

### **C. The GOOGLE+ Application.**

Contrary to the Opposition’s attempt to mislead the Board, Google has not applied for the GOOGLEPLUS mark. The mark at issue is GOOGLE+. *See* United States Trademark Application No. 85358119. The singular difference between the famous GOOGLE mark and the GOOGLE+ mark is the + symbol.

Prior to publication of the GOOGLE+ mark, GWI filed a letter of protest against registration. *See* the November 10, 2011 Letter of Protest Memorandum attached to GWI’s Opposition. The examiner rejected GWI’s letter of protest, decided that the GOOGLE+ and GOOGABOX marks were not confusingly similar and that the GOOGLE+ mark should proceed

to publication.

For its part, GWI has similarly decided that there is no confusion between the GOOGABOX mark and Google's famous marks. *See* Opposition at p. 1 (alleging that GWI "had NO problem" with Google prior to the GOOGLE+ application); Opposition at p. 2 (alleging no confusion between the GOOGLE mark and the GOOGABOX mark for search engines "or any other products the mark 'Google' may represent").<sup>3</sup> Thus, GWI alleges that there is no confusion between GOOGABOX and the famous GOOGLE mark or the multitude of GOOGLE-formative marks, such as GOOGLE SEARCH, GOOGLE LATITUDE, GOOGLE BUZZ, GOOGLE WAVE, GOOGLE MAPS, GOOGLE PRODUCT SEARCH, GOOGLE DIRECTORY, GOOGLE ADWORDS, and GOOGLE ADSENSE. Specifically, marks like GOOGLE LATITUDE, GOOGLE BUZZ and GOOGLE WAVE have already been used by Google in connection with Google's social networking related services. *See, e.g.*, United States Trademark Registration No. 3,979,983.

Despite alleging that there is no confusion between GOOGABOX and GOOGLE, GWI carves out an exception for the GOOGLE+ mark. GWI's apparent argument is that adding the simple + symbol to the famous GOOGLE mark, somehow so distinguishes it from the GOOGLE mark that it must not be allowed to register. This analysis is implausible and contradictory.

## **ARGUMENT**

### **A. GWI's Opposition Fails to Plead a Plausible Claim and Should Be Dismissed.**

To survive a motion to dismiss, an opposition must offer "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl.*

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<sup>3</sup> GWI further alleges that the words "go," "goo," "goog," and "ogle" cannot be confused with the GOOGLE mark because of their different meanings. *See* Opposition at p. 2.



*Corp.*, 550 U.S. at 555. Instead, the opposition’s allegations “must be enough to raise a right to relief above the speculative level.” *Id.* (citation omitted). An opposer must set forth enough facts to state a claim that is “plausible on its face,” that is, “plausibly suggesting (not merely consistent with)” a right to relief. *Id.* at 557, 570. These pleading standards prevent an opposer with “a largely groundless claim” from being allowed to “take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value.” *Id.* at 557-58 (quoting *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005)).

These standards are the minimum pleading requirements for all oppositions under Federal Rule of Civil Procedure 8(a). *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1953 (2009). More specifically, the *Iqbal* opinion explained that the holding of *Bell Atl. Corp.* rested on two distinct principles. First, the Board has no obligation to accept allegations that are nothing more than “legal conclusions.” *Iqbal*, 129 S. Ct. at 1949-50. This is to deter opposers from bringing factually unsupported theories based on nothing more than information and belief, and then demanding burdensome discovery to test those theories.

Second, even if an opposition contains specific factual allegations, “only a complaint that states a plausible claim for relief,” rather than “the mere possibility of misconduct,” will survive a motion to dismiss. *Id.* at 1950. This determination is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

Here, GWI’s claims are so unsupported and implausible on their face that they should be dismissed without leave to amend. Absent dismissal, GWI’s Opposition will unnecessarily “take up the time of a number of other people” and lead to irrelevant and “burdensome discovery.” *Bell Atl. Corp.*, 550 U.S. at 557-58. GWI should not be able to hold up registration of the GOOGLE+ mark without first presenting a plausible claim based in common sense.

**B. Googabox World Inc. Fails to Plead Facts Supporting a Basis for Standing to Pursue This Opposition.**

Googabox World Inc. does not have standing to oppose the GOOGLE+ mark.

Accordingly, Googabox World Inc. and any claims relating to Googabox World Inc. must be dismissed with prejudice. In order to have standing to bring an opposition, the opposer must have a plausible and “reasonable basis for its belief that it would suffer some kind of damage if the mark is registered.” TBMP § 309.03(b). But Googabox World Inc. does not exist. *See* Ball Decl. ¶ 2, Ex. A (Nevada Secretary of State records indicating that the Googabox World Inc. corporation was revoked in July 2008). As a non-existent entity cannot suffer financial or legal harm, there is therefore no reasonable basis to believe that Googabox World Inc. would be damaged by registration of the GOOGLE+ mark. Any allegations stating otherwise are illogical and not made in good faith.

Even if Googabox World Inc. existed, it failed to plausibly plead any interest damaged by registration of GOOGLE+. First, Googabox World Inc. is not the owner of record of the purported GOOGABOX registration. *See* United States Trademark Registration No. 3,541,298. And second, Googabox World Inc. has provided no evidence of or allegation regarding a license, assignment or any other possible interest Googabox World Inc. has in the GOOGABOX mark. At best, Googabox World Inc. only has conclusory allegations regarding damage to vague “intellectual property.” *See* Opposition at p. 3. But mere conclusions are insufficient to support a reasonable basis that it would suffer damage. *Bell Atl. Corp.*, 550 U.S. at 555 (requiring that plaintiff plead plausible facts rather than labels, conclusions or a formulaic recitation of the elements); *Iqbal*, 129 S. Ct. at 1949 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). Accordingly, Googabox World, Inc.

has no standing to pursue its claims and any claims relating to Googabox World Inc. must be dismissed with prejudice.<sup>4</sup>

**C. GWI's Opposition Lacks a Plausible Basis to Allege Similarity Between the GOOGABOX and GOOGLE+ Marks.**

GWI's conclusory allegations do not support a plausible claim that the GOOGABOX and GOOGLE+ marks are similar. Indeed, GWI's allegations regarding what marks are and are not similar belie any plausible similarity between the GOOGABOX and GOOGLE+ marks.<sup>5</sup> Google respectfully requests that GWI's conclusory and implausible claims be dismissed with prejudice.

**1. GWI's Concessions Regarding the Lack of Any Similarity Between the Famous Google Marks and the GOOGABOX Mark Contradicts Any Plausible Claim of Similarity Between GOOGABOX and GOOGLE+.**

Given GWI's allegations regarding the similarity of various marks, it cannot in good faith allege a plausible claim that GOOGABOX and GOOGLE+ are similar. For example, GWI alleges the following marks are and are not similar:

Alleged Dissimilar Marks		Alleged Similar Marks	
Googabox	Google	Googabox	Google+

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<sup>4</sup> Even still, if Googabox World Inc. did exist *and* it could plead a plausible interest in the GOOGABOX mark, it has failed to timely oppose registration of GOOGLE+. Unlike Mr. Rossouw, Googabox World Inc. did not file an extension to oppose the GOOGLE+ registration. Googabox World Inc.'s opposition was therefore due on December 29, 2011 – thirty days after the GOOGLE+ mark was published on November 29, 2011. *See* TBMP § 306; *see also*, 15 U.S.C. § 1063(a) (requiring opposition be filed within thirty days of publication of application being opposed or within period of time of extension). Since Googabox World Inc. did not file its opposition until January 25, 2012, its claims are untimely and they must be dismissed with prejudice.

<sup>5</sup> To the extent there is similarity between the GOOGABOX and GOOGLE+ marks, there is likewise similarity between the GOOGABOX mark and Google's family of famous GOOGLE and GOOGLE-formative marks. Google's rights in its family of GOOGLE and GOOGLE-formative marks predate any conceivable rights GWI has in the GOOGABOX mark. Accordingly the GOOGABOX mark is subject to cancellation because of the alleged similarity with Google's family of GOOGLE and GOOGLE-formative marks.

Googabox	Google Latitude	Googleyfaces	Google
Googabox	Google Buzz		
Googabox	Google Wave		
Googabox	Google Profiles		
Googabox	Google Search		
Googabox	Google Maps		
Googabox	Google Product		
Googabox	Google Directory		
Googabox	Google AdWords		
Googabox	Google AdSense		
Goog	Google		
Goo	Google		
Go	Google		
Ogle	Google		
GooGoo	Google		

The only difference between Google’s admittedly famous GOOGLE mark and the GOOGLE+ mark is the + symbol. Given this minor difference, GWI cannot plausibly allege that there is no similarity between all the marks in the left-hand column, including GOOGABOX and GOOGLE, while claiming some similarity between GOOGABOX and GOOGLE+. *Gray v. Dane County*, 854 F.2d 179, 182 (7th Cir. 1988) (finding that “courts are not obliged, however, to ignore any facts set forth in the complaint that undermine the plaintiff’s claim or to assign any weight to unsupported conclusions of law.”); *Top Tobacco, L.P. v. N. Atl. Op. Co.*, No. 06 C 950, 2007 WL 118527, \*7 (N.D. Ill. 2007), *aff’d* 509 F.3d 380 (7th Cir. 2007) (finding that the plaintiff “cannot have it both ways...[i]t cannot argue to the USPTO that marks that include the

word ‘top’ for tobacco products are weak because the term is ‘common’ and then argue before this Court that the TOP mark is strong”). Such a claim lacks common sense and must be dismissed. *Iqbal*, 129 S. Ct. at 1950.

GWI likewise cannot have it both ways. It is not plausible to allege that GOOG and GOOGLE or GOO and GOOGLE are not confusingly similar while alleging that GOOGABOX and GOOGLE+ are similar. Once GWI rejects any similarity between a GOOG-formative mark and GOOGLE, it cannot claim that GOOGABOX (also a GOOG-formative mark) is similar to GOOGLE+. Such allegations would have to rely on the implausible argument that the primary similarity between GOOGABOX and GOOGLE+ is their suffixes. But there is no conceivable basis for alleging that “box,” “a box” or “ga box” are similar to “+” or “le+” (or “plus,” based on pronunciation).

Put another way, GOOGLE+ is identical to the famous and longstanding GOOGLE mark except for the use of the “+” symbol. Since GWI claims there is no confusion between GOOGABOX and the famous GOOGLE mark, it is logically forced to allege that there is some significant similarity between GOOGABOX and the + symbol in the GOOGLE+ mark. Yet, there is no plausible basis for claiming that a + symbol looks anything like any element of the GOOGABOX mark. *Nat’l. Rural Elec. Coop. Assoc. v. Suzlon Wind Energy Corp.*, 78 U.S.P.Q. 2d 1881 (T.T.A.B. 2006) (finding no confusing similarity even where both marks used symbols containing wavy lines especially since – like the GOOGLE+ mark – the defendant’s mark included its company name); *Ocean Spray Cranberries, Inc. v. Ocean Garden Prods., Inc.* 223 U.S.P.Q. 1027 (T.T.A.B. 1984) (no confusing similarity between two breaking waves logos).

Nor is there any plausible basis for claiming that the + symbol sounds anything like any element of the GOOGABOX mark. GWI repeatedly attempts to improperly dissect and compare

the two marks. *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005 (C.C.P.A. 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather it must be considered as a whole in determining likelihood of confusion”). Nevertheless, even comparing the individual portions of GOOGABOX and GOOGLE+ there is no plausible argument that they are similar, apart from their common use of “GOOG” (which also comprises a dominant portion of Google’s famous and earlier GOOGLE mark). The + symbol does not sound like the word “box.” It has neither the strong “b” nor “x” sounds. Likewise, the alleged “le” syllable does not sound like GWI’s alleged “ga” syllable. Any argument otherwise stretches the limits of common sense. *Ava Enters., Inc. v. P.A.C. Trading Group, Inc.* 86 U.S.P.Q. 2d 1659, 1661 (T.T.A.B. 2008) (granting judgment on the pleadings despite the opposer’s allegations that the marks were similar because they shared the letters B-O-S-S and finding that the opposer’s argument “ignores the fact that the words, as well as the mark as a whole, are entirely different.”). Instead, to survive a motion to dismiss, an opposer must plead plausible facts sufficient to “raise a right to relief above the speculative level.” *Bell Atl. Corp.*, 550 U.S. at 557, 570. In this case, GWI has failed to plausibly allege any similarity between the respective marks beyond the similarities with Google’s earlier GOOGLE and related GOOGLE-formative marks.

Since the GOOGABOX mark lacks any elements that are visually or aurally similar to the + symbol of the GOOGLE+ mark, GWI’s implausible claims must be dismissed. *Kellogg Co. v. Pack’Em Enters., Inc.* 951 F.2d 330, 333 (Fed. Cir. 1991) (affirming the dismissal of an opposition on the singular grounds that the marks were dissimilar and stating that “[w]e know of no reason why, in a particular case, a single *DuPont* factor may not be dispositive.”). Moreover, considering GWI’s admissions regarding the dissimilarity of the GOOGABOX and GOOGLE and GOOGLE-formative marks, Google respectfully requests that GWI’s Opposition be

dismissed with prejudice.

**D. GWI's Failure to Allege that GOOGABOX Is a Famous Mark Requires Dismissal of Any Dilution Claim.**

It is unclear whether GWI alleges a dilution claim against the GOOGLE+ mark. On the one hand, GWI alleges that registration of GOOGLE+ “dilutes the distinctiveness of GWI’s intellectual property and significantly diminishes its value.” Opposition at p. 3. But GWI fails to allege that the GOOGABOX mark is famous. *See* TBMP 309.03(c) (a “proper pleading of [a dilution] claim requires an allegation the plaintiff’s mark was famous prior to the earliest date on which the defendant can rely for purposes of priority.”). To the extent that GWI alleges dilution from the registration of GOOGLE+, GWI’s dilution claim must be dismissed. Additionally, dismissal should be with prejudice as GWI has not and cannot in good faith plead that the GOOGABOX mark is or was famous. *See* TBMP 309.03(c); Fed. R. Civ. P. 11.

**E. GWI's Indecipherable Opposition Requires a More Definite Statement Before Google Can Reasonably Respond.**

GWI is required to simply and concisely plead its Opposition. *See* TBMP § 309.03(a)(2). GWI’s Opposition, however, is an assortment of unsupported conclusions, false aspersions and citations to irrelevant law. Google cannot understand or answer the Opposition in its current form. Accordingly, if the Board finds that GWI has standing to oppose GOOGLE+ and that GWI has alleged a plausible claim upon which relief could be granted, Google requests that the Board require GWI to provide a more definitive statement of its claims. *See* Fed. R. Civ. P. 8, 12(e); TBMP § 505.01; *see also*, TBMP § 309.03(a)(2) (“The elements of each claim should be stated simply, concisely, and directly, and taken together ‘state a claim to relief plausible on its face.’”) quoting *Iqbal*, 129 S.Ct. 1937, and citing TBMP § 503.02.

Specifically, Google requests that GWI provide simple and concise allegations regarding:

(1) who specifically is the Opposer in this matter; (2) who owns the alleged mark(s); (3) what mark or marks are alleged against Google; (4) what specific rights in GOOGABOX are being asserted; (5) specificity of the claims alleged against Google – e.g. confusion, dilution or both; (6) the alleged “intellectual property” asserted against Google; and (7) the reasonable basis for any alleged damage, including what specific damage is faced by GWI.

This information is necessary for Google to assess and answer GWI’s claims. GWI should, therefore, be required to submit a short and plain statement of its Opposition, which meets the requirements of Rules 8 and 10 of the Federal Rules of Civil Procedure and Rule 309 of the TBMP.<sup>6</sup>

**F. GWI’s Immaterial and Impertinent Allegations Should Be Stricken From the Opposition.**

If the Board finds neither a dismissal nor a more definitive statement is necessary, then Google respectfully requests that the Board strike the immaterial and impertinent allegations from GWI’s Opposition. *See* Fed. R. Civ. P. 12(f); TBMP 506; *see also Harsco Corp. v. Elec. Scis. Inc.*, 9 U.S.P.Q. 2d 1570 (T.T.A.B. 1988). First, Google requests that the Board strike any and all references to the non-existent Googabox World Inc. as immaterial and misleading. Second, Google requests that the Board strike GWI’s references to foreign or non-existent law, including Australian Law, the “Companies Act,” and GWI’s incorrect summary of U.S.

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<sup>6</sup>In re-pleading the Opposition, Google specifically requests that “all averments should be made in numbered paragraphs, the contents of each of which should be limited as far as practicable to a statement of a single set of circumstances.” TBMP § 309.03(a)(2) citing Fed. R. Civ. P. 10(b); *see also, Isle of Aloe, Inc. v. Aloe Creme Labs., Inc.*, 180 U.S.P.Q. 794 (T.T.A.B. 1974) (striking the opposition since while the paragraphs were numbered, the paragraphs were not limited to a single set of circumstances). Google further requests that the paragraphs be consecutively numbered and double spaced in compliance with TBMP §§ 309.02, 309.03(a)(2). GWI’s current Opposition is simply too disorganized and confused for Google to be able to sufficiently respond.



trademark law, as immaterial.<sup>7</sup> Third, Google requests that the Board strike GWI’s allegations regarding Google’s “monopolizing tactics” and Google’s search engine ranking practices as immaterial and impertinent.<sup>8</sup> Fourth, Google requests that the Board strike GWI’s allegations regarding its vague and undefined “intellectual property” as immaterial to an Opposition proceeding concerning only GWI’s purported rights in an alleged trademark. *See* Opposition at p. 3. Fifth, Google requests that the Board strike GWI’s repetitive musings and nonsensical questions regarding Google’s names and marks as immaterial.<sup>9</sup> Finally, Google requests that the Board strike GWI’s alleged similarities between irrelevant and fictional name and marks as immaterial.<sup>10</sup> Striking these immaterial and impertinent allegations will clarify GWI’s opposition and allow Google and the Board to focus on the relevant issues.

### CONCLUSION

For the foregoing reasons, Google respectfully requests that the Board dismiss GWI’s illogical and unsupported Opposition with prejudice. In the alternative, Google respectfully requests that the Board require GWI to file a comprehensible Opposition in compliance with

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<sup>7</sup> *See* Opposition at p. 2 (citation to the Australian language); *id.* at p. 2 (citation to unknown non-U.S. law relating to a “Companies Act”); *id.* at p. 2 (GWI’s incorrect and conclusory summary of U.S. trademark law throughout the Opposition, including, the claim that Google’s rights in the GOOGLE marks and any confusingly similar marks are limited to only the “COMBINATION of these words, ‘GO,’ ‘GOO,’ ‘GOOG,’ and ‘OGLE’ resulting in the ‘uniqueness’ of their trademark OR any of the aforesaid words composed together with garble, such as ‘oogle’ or ‘gle’ or ‘le’ (accounting for the ENGLISH language only)”).

<sup>8</sup> *See id.* at p. 2 (false and impertinent allegations regarding monopolization by Google); *id.* at pp. 3-4 (false, impertinent and immaterial allegations regarding the operation of Google’s search engine).

<sup>9</sup> *See id.* at p. 2 (immaterial questions regarding whether consumers say Goo it, Goog it or Google it); *id.* at p. 2 (immaterial questions regarding whether Google has the right to cancel the purported mark GooGoo).

<sup>10</sup> *See id.* at p. 1 (immaterial allegations regarding the meaning and use of the purported word “Googa-Mooga”); *id.* at p. 3 (immaterial reference to the non-existent marks MacDonalds and MacBlomuls).

U.S. Trademark Law, the Trademark Manual of Board Procedure and the Federal Rules of Civil Procedure. And, if GWI's Opposition survives the motion to dismiss and motion for a more definitive statement, Google respectfully requests that the Board strike the immaterial and impertinent contentions from GWI's Opposition so that the parties and the Board do not have to waste their time on unnecessary discovery, testimony, argument and briefing.

Dated: March 6, 2012



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application No. 85358119  
Mark: GOOGLE+

Googabox World Incorporated	)	
Opposer,	)	
	)	
vs.	)	Opposition No. 91203541
Google Inc.	)	
Applicant.	)	
	)	

**DECLARATION OF ERIC BALL IN SUPPORT OF APPLICANT GOOGLE INC.'S  
MOTION TO DISMISS OPPOSER GOOGABOX WORLD INCORPORATED'S  
OPPOSITION TO THE GOOGLE+ APPLICATION**

I, Eric J. Ball, declare as follows:

1. I am an attorney with the law firm of Fenwick & West LLP, counsel for the Applicant, Google Inc. ("Google"), and I have personal knowledge of the matters stated herein and am competent to testify thereto.

2. Attached hereto as Exhibit A is a true and correct copy of Nevada Secretary of State's entity details concerning the revoked Googabox World, Inc. corporation. As indicated in Exhibit A, I downloaded this information from the Nevada Secretary of State's website on February 11, 2012.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED at Mountain View, California this 6th day of March, 2012.



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Eric J. Ball

# **EXHIBIT A**

## GOOGABOX WORLD INC.

### Business Entity Information

Status:	Revoked	File Date:	7/02/2008
Type:	Domestic Corporation	Entity Number:	E0422052008-7
Qualifying State:	NV	List of Officers Due:	8/31/2008
Managed By:		Expiration Date:	
NV Business ID:	NV20081059039	Business License Exp:	

### Registered Agent Information

Name:	CSC SERVICES OF NEVADA, INC.	Address 1:	2215-B RENAISSANCE DR
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89119
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

### Financial Information

No Par Share Count:	1,500.00	Capital Amount:	\$ 0
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**No stock records found for this company**

### Officers

☐ Include Inactive Officers

**No active officers found for this company**

### Actions\Amendments

Action Type:	Articles of Incorporation		
Document Number:	20080447339-20	# of Pages:	1
File Date:	7/02/2008	Effective Date:	

Initial Stock Value: No Par Value Shares: 1,500 ----- Total Authorized Capital: \$ 0.00

PROOF OF SERVICE

I declare that:

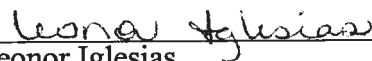
I am employed in the County of Santa Clara, California.

I am over the age of eighteen years and not a party to the within cause; my business address is Silicon Valley Center, 801 California Street, Mountain View, California 94041. On the date indicated below, I served **APPLICANT GOOGLE INC.'S MOTION TO DISMISS OPPOSER GOOGABOX WORLD INCORPORATED'S OPPOSITION TO THE GOOGLE+ APPLICATION and DECLARATION OF ERIC BALL IN SUPPORT OF APPLICANT GOOGLE INC.'S MOTION TO DISMISS OPPOSER GOOGABOX WORLD INCORPORATED'S OPPOSITION TO THE GOOGLE+ APPLICATION**, on the interested parties in said cause, by mailing a true copy thereof as indicated below, addressed as follows:

ANDRE D. ROSSOUW  
7407 LEMP AVENUE  
NORTH HOLLYWOOD, CA  
91605

- ☒ **BY US MAIL:** by placing the document(s) listed above in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with our ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly deposited with the United States Postal Service that same day with postage prepaid.
- ☐ **BY E-MAIL:** by mutual agreement between the parties, causing to be transmitted via e-mail the document(s) listed above to the addressee(s) at the e-mail address(es) listed above.
- ☐ **BY PERSONAL DELIVERY:** by causing to be personally delivered the document(s) listed above to the addressee(s) at the address(es) set forth above.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Mountain View, California, this 6<sup>th</sup> day of March, 2012.

  
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Leonor Iglesias